IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]
Description of case

Criminal Appeal No. 655 of 2001 **Decided on : February 19, 2007**
(Old No. 53 of 1997)

A.F.R. (Approved for Reporting)
Nor approved for Reporting

Dated. 19.02.2007

(Initial of Judge)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 655 of 2001
(Old No. 53 of 1997)

Dinesh
S/o Sri Bachan Lal
R/o Village Doni, Patwari Chhetra Pakha,
Sub District Jakhauli, District Tehri Garhwal.

…… Appellant

Versus

The State …… Respondent

Ms. Geeta Parihar, Advocate for the appellant.
Mr. Amit Bhat, Asstt. Government Advocate with Mr. J.P.N. Sanguri, Deputy Government Advocate for the respondent State.

Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble Dharam Veer, J.

[Per Hon'ble Prafulla C. Pant, J.]

This appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 28th of January 1997, passed in Sessions trial No. 13 of 1993, whereby learned Sessions Judge, Tehri Garhwal has convicted the appellant Dinesh under Section 302 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.) and sentenced him to imprisonment for life.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that on 2nd March 1993, P.W. 2 Suresh Chandra along with P.W. 3 Sohan Lal, accused / appellant Dinesh and Laxmi Prasad (deceased),

had gone together form their houses to Inter College Dhopardhar to enquire about the date of practical examination. When they reached at Penkoti, two other students of the same College, told them that the date of practical examination is yet not fixed. Thereafter, they started coming back to their village. P.W. 2 Suresh Chandra and P.W. 3 Sohan Lal were 10 – 15 paces ahead of accused / appellant Dinesh and Laxmi Prasad (deceased). They were on foot. When they reached near Sherji Tok, at about 4:30 P.M., suddenly, the aforesaid two witnesses heard noise from behind and saw that Dinesh and Laxmi Prasad were quarreling with each other. The two witnesses saw that deceased Laxmi Prasad gave a kick on the back of accused / appellant Dinesh. Reacting to it, Dinesh took out a knife from his pocket, and angrily gave a blow on the chest of Laxmi Prasad (deceased). Accused / appellant Dinesh, thereafter, drew the knife back from the body of Laxmi Prasad and ran away from the place of occurrence. The two witnesses, namely Suresh Chandra and Sohan Lal took the injured on their back to village Doni, Patti Giyarah Gaon, and reached there in the evening. They narrated the entire incident to the father of the injured, meanwhile, the injured succumbed to the injuries received by him and died on the very day. P.W. 1 Parma, father of Laxmi Prasad got lodged the First Information Report (Ext. A –1) of the incident, on the next day i.e. 03.03.1993, at about 12:30 hours, to the Nayab Tehsildar of the area (In Uttaranchal hills, in certain areas, Revenue Officers are given police powers). The distance between the place of incident and sub Tehsildar Headquarter of Jakhauli is 70 Kms. by bus and rest 12 Kms. on foot A Crime No. 04 of 1993 was registered against the accused

Dinesh under Section 302 of I.P.C. The Revenue Officers went to the village Doni and took the dead body of Laxmi Prasad in their custody on that very day i.e. 3rd March 1993. An inquest report (Ext. A –3) was prepared by the Nayab Tehsildar in the presence of the Panchas (witnesses). The accused Dinesh was also arrested on that very day, and knife (Ext. 1) used in the crime, was also recovered from him. A recovery memo (Ext. A –4) was prepared by the Nayab Tehsildar Madho Singh Rana (P.W. 6). The said Investigating Officer inspected the place of incident and prepared the site plans Ext. A –6 and Ext. A –7, and interrogated the witnesses. Meanwhile, the dead body was sent for post mortem examination next day on 4th March 1993. Autopsy was conducted on the dead body by P.W. 4 Dr. Mohibullah at Tehri, who prepared the post mortem examination report (Ext. A –2). After completion of the investigation, a charge sheet was submitted against the accused Dinesh for his trial relating to offence punishable under Section 302 of the I.P.C.

4) The Magistrate on receipt of the charge sheet, appears to have committed the case to the court of Sessions, for trial, after giving necessary copies to the accused, as required under Section 207 of the Cr.P.C. The Sessions Judge, after hearing the prosecution and the defence, framed charge of offence punishable under Section 302 of the I.P.C. against accused / appellant Dinesh. The accused / appellant pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Parma (informant and father of the deceased); P.W. 2 Suresh Chandra (eyewitness); P.W.3 Sohan Lal (another eyewitness); P.W. 4 Dr. Mohibullah (who conducted the

post mortem examination); P.W. 5 More Singh (witness of the preparation of inquest report) and P.W. 6 Naib Tehsildar Madho Singh Rana (Investigating Officer). No evidence was adduced in defence. The oral and documentary evidence, produced by the prosecution was put to the accused under Section 313 of Cr.P.C., in reply to which he alleged the same to be false. After hearing the prosecution and the defence, the trial court found the accused Dinesh Guilty of the offence punishable under Section 302 of the I.P.C., and after hearing on sentence, sentenced him to imprisonment for life. Aggrieved by the judgment and order dated 28.01.1997, the convict has preferred this appeal. The appeal was initially filed before the Allahabad High Court in the year 1997 from where it is transferred to this Court under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

5) Before further discussions, it is pertinent to mention here, that ante mortem injuries found on the person of the deceased at the time of post mortem examination by P.W. 4 Dr. Mohibullah, as mentioned in Ext. A –2. The same is being reproduced, as under:

> ***"1. Penetrating incised wound is present on the front of left side of chest in 4.5 cm medial to left nipple. Wound is 3.5 cm X 1.5 cm X 7 cm deep in size. Edges are clean cut and margins are inverted. Wound is horizontal in position elliptical in shape. Direction of wound is perpendicular to the chest wall from anterior to posterior. On opening the thorax, pericardium is cut beneath the wound. Pericardium cavity is filled with blood. On removing the pericardium***

there is penetrating incised wound on the anterior wall of right ventricle on its upper part. Size is 2 cm X .5 cm X cavity deep. Blood present in left thoracic cavity. Both sides of chambers of heart is empty.

2. Abrasion on dorsal aspect of terminal phalynx of left little finger……. Size 3 mm X 3 mm."

Cause of death, according to the Medical Officer, who conducted the autopsy, was shock as a result of haemorrhage due to ante mortem injury No. 1, caused by sharp cutting and edged weapon.

6) P.W. 1 Parma, father of the deceased Laxmi Prasad, has stated that his son was aged 20 years and student of class XII. On the fateful day, it is stated by him, that his son had gone to enquire about the date of the practical examination. In the evening, according to this witness, Suresh Chandra and Sohan Lal brought Laxmi Prasad in an injured condition and they told him that Dinesh, one of their friends, had caused knife injuries on the person of Laxmi Prasad. P.W. 1 Parma has further stated that within 4-5 minutes of reaching in the village Laxmi Prasad succumbed to the injuries. The witness further states that whole night he remained in the village with the dead body. P.W. 1 Parma has further clarified that during those days Patwaris were on strike and on the next day, he lodged the first information report (Ext. A –1) with the Nayab Tehsildar.

7) P.W. 2 Suresh Chandra and P.W. 3 Sohan Lal are the eye- witnesses of the incident. P.W. 2 Suresh Chandra has stated on oath that on 02.03.1993, he along with Dinesh

(accused / appellant), Laxmi Prasad (deceased) and Sohan Lal (P.W. 3) had gone together to enquire about the date of practical examination. The witness states that he and the three had to go for that purpose to Inter College Dhopardhar. However, when they reached Penkoti, two other students, who were coming back from the College, told them that the date of practical examination is yet not fixed. On this, the four, who were heading towards the College, started returning form Penkoti towards their village. According to this witness he and another witness Sohan Lal were 10 –15 paces ahead of Laxmi Prasad (deceased) and Dinesh (accused). At about 4:30 P.M., when they reached Sherji Tok, they heard some noise and looked back. According to this witness he saw Dinesh and Laxmi Prasad quarreling with each other. P.W. 2 Suresh Chandra further stated that, suddenly, Laxmi Prasad gave a kick on the back of Dinesh and in reaction to it, Dinesh took out a knife from his pocket, and stabbed it on the chest of Laxmi Prasad. The witness further states that Dinesh drew back the knife from the chest of the injured and ran away. According to the witness, the accused in that night stayed with her aunt's (Bua's) place. P.W. 2 Suresh Chandra has stated that he and Sohan Lal rushed to the spot and took the injured Laxmi Prasad to the village, where they reached in the evening. The injured succumbed to the injuries after reaching home. P.W. 3 Sohan Lal has corroborated the entire prosecution story narrated by P.W. 2 Suresh Chandra. The statements of these two witnesses are natural and trustworthy. They are impartial and had no enmity with either the deceased or the accused. Both the witness state that all the four were friends. The presence of the above two witnesses cannot be doubted at the place

on incident, in the facts and circumstances, mentioned above.

8) From the oral evidence on record read with the post mortem examination report, we are in agreement with the trial court to the extent that the prosecution has been successful in proving the fact that Laxmi Prasad was given a knife blow by accused / appellant Dinesh, after the deceased gave a kick on his back. However, there appears no motive of commission of murder. Exception 1 to Section 300 of the I.P.C. provides that culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation. We have already discussed above, that both the eye- witnesses have clearly stated that both Laxmi Prasad (deceased) and Dinesh (accused / appellant) were friends. There is no motive for the accused / appellant for intentionally killing the deceased. The two witnesses and the above due were happily coming back to their village after making the enquiry regarding the date of their practical examination. In these circumstances, in a sudden quarrel, when deceased gave a kick on the back of the accused / appellant, he appears to have acted angrily and gave a blow with knife on the chest of the deceased. It is relevant to mention here, that there is a single blow given by the accused / appellant, which further indicates that he had no intention to kill the deceased, though, he had the knowledge that the injury could have caused the death of the deceased. In view of the above, we are of the considered view, that it is a case covered under Exception 1 to Section 300 of I.P.C., and, the act on the part of the appellant is culpable homicide not

amounting to murder. That being so, the charge proved against the accused / appellant Dinesh is the one punishable under Section 304 part I of I.P.C., and not of Section 302 of I.P.C.

9) Having heard learned counsel for the parties, and after going through the entire evidence on record, we are of the opinion that awarding the sentence of ten years rigorous imprisonment, in the facts and circumstances of the case, would meet the ends of justice. Accordingly, we allow the appeal, partly. The conviction and sentence recorded by the trial court vide its judgment and order dated 28.01.1997, is set aside. The accused / appellant Dinesh is convicted under Section 304 Part I of I.P.C., instead of one punishable under Section 302 of I.P.C. After hearing the parties, we further direct that the accused / appellant Dinesh is sentenced to rigorous imprisonment for a period of ten years, out of which the period already underwent by him, during the trial or during the period of this appeal, shall be adjusted. The accused / appellant is in jail. He shall be released forthwith, if the period of ten years imprisonment has already been served out, by him. If, the period is yet not complete, the accused appellant shall serve out the remaining part of the sentence. With this observation, the appeal stands disposed of. Send the lower court record to the Sessions Judge, Tehri Garhwal for compliance of the order. The Registry shall also sent a copy of this order to the Superintendent of jail concerned.

(Dharam Veer, J.) **(Prafulla C. Pant, J.)**

Dt. February 19, 2007.
H. Negi